IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.210 of 2005(O&M)

Decided on : November 11, 2010

Sunder Lal

... Petitioner

VERSUS

State of Haryana

... Respondent

CORAM : HON'BLE MR.JUSTICE A.N.JINDAL

Present: None for the petitioner.
(petition received through jail).

Mr.J.S.Rattu, Deputy Advocate General
for the respondent – State of Haryana.

A.N.JINDAL, J.-

Sunder Lal, accused – petitioner (herein referred as `the petitioner') has sent the present petition from jail challenging the correctness, legality and propriety of the judgment dated 7.10.2004 passed by Appellate Court (Additional Sessions Judge, Rewari) dismissing his appeal against the judgment dated 7.4.2004 passed by Additional Chief Judicial Magistrate, Rewari convicting and sentencing him as under:-

U/ss 465 & 471 IPC	*rigorous imprisonment for two years and to pay fine of Rs.2000/-, on each count*
U/ss 468 & 205 IPC	*rigorous imprisonment for three years and to pay fine of Rs.3000/-, on each count*

The instant case was registered on the basis of a complaint made by Shri R.S.Virk, the then Chief Judicial Magistrate, Rewari, alleging that one Abdul Kadar son of Issak Bhai was an accused in case FIR No.127 dated 15.4.1994 registered at Police Station Dharuhera under Sections 279/338 and 304-A of the Indian Penal Code 1860 (for brevity `the IPC'). He was allowed bail on 18.4.1994 on executing bail bond in the sum of Rs.10,000/- with two sureties of the like amount. Pursuant to this bail order, an application was moved on behalf of the said accused Abdul Kadar under the signature of Shri H.O.Maratha, Advocate for acceptance of bonds. Two persons claiming themselves to be Ajay Kumar son of Dalip Singh and Surender son of Dalip Singh residents of village Suthana, Police Station Bawal furnished surety bonds in the sum of Rs.10,000/- each. Both of them were identified by one Ram Sarup Sarpanch of village Ranoli Pranpura, Police Station Bawal. Both the sureties also furnished copy of Jamabandi relating to land which was mentioned in the bonds. However, on enquiry, the Magistrate found that the person posing himself as Ajay Kumar son of Dalip Singh in the surety bond furnished by him, was actually Bhag Singh son of Net Ram resident of village Suthana. His statement to this effect was recorded by the Court, while the other person (surety) slipped out of the Court. On further enquiry, Bhag Singh further disclosed that the person, who had fled away was his real brother, but he later on changed his stand and denied any relationship with him. However, it came to light later on that the person, who had slipped was the petitioner. The matter was investigated, and ultimately on submission of a report under Section 173 of the Code of Criminal Procedure, 1973, all the four accused were charged

for the offences under Sections 465/468/471/205 and 120-B IPC, to which they pleaded not guilty and opted to contest.

In order to substantiate its charges, the prosecution examined five witnesses in all.

However, during trial, accused Bhag Singh absented himself and he was ultimately declared proclaimed offender, while accused Ram Sarup and Ranbir had expired. Therefore, only the petitioner faced the complete trial.

When examined under Section 313 of the Code of Criminal Procedure, 1973, the petitioner denied the allegations and pleaded his false implication. The trial ended in conviction. His appeal also failed.

Having scrutinised the impugned judgments, both the courts below have observed that Bhag Singh and the petitioner impersonated Ajay and Surender and tried to get the accused released on the basis of forged surety bonds. No exception could be made to the view expressed by both the courts below. The star witnesses of the prosecution are: Shiv Kumar (PW2), who was working as Clerk with Shri Hari Om Maratha, Advocate; and Shri R.S.Virk, who was posted as Chief Judicial Magistrate, Rewari at the relevant time. Shri R.S.Virk, (PW4) has reiterated all the allegations as made by him in his complaint (Ex.PW5/B). Shiv Kumar (PW2) has deposed that accused had posed themselves as Surender and Ajay Kumar and he had filled the bonds accordingly. He has further deposed that later on, it was revealed that they had impersonated Ajay and Surender.

Even otherwise, the interference at the revisional stage could be made very sparingly and in cases where the judgment was palpably

wrong, perverse or ignoring the relevant evidence or taking into consideration irrelevant evidence or the court while holding the trial misconducted the proceedings. It has also been observed by the Apex Court in case **State of Kerala vs. Puttumana Illath Jathavedan Namboodiri**, *AIR 1999 SC 981* as under:-

> "Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

Similar observations were made in case **Jayakanth vs. State of Karnataka**, *2009(5) RCR(Criminal) 896 (Karnataka),* wherein, it was observed that unless the petitioner establishes that there is an error apparent on the face of the record or there is such illegality or perversity in the order of the courts below, the High Court cannot disturb the finding recorded by the lower court.

Keeping in view the above, the findings of guilt of the petitioner concurrently recorded by both the courts below, are upheld.

Now, coming to the quantum of sentence, it is observed that the accused-petitioner dared to play fraud in the temple of justice, therefore, keeping in view the nature of the allegations and the gravity of the offence, the sentence awarded, appears to be in commensuration with the offence committed. Hence, the same also needs no interference.

Consequently, the petition is dismissed.

Copy of this order be sent to Chief Judicial Magistrate, Rewari for compliance.

November 11, 2010 (A.N.JINDAL)
`gian' JUDGE